

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RUSSELL FOUT,

Plaintiff,

v.

CIVIL ACTION NO. 1:07cv108
(Judge Keeley)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 4.01(d), on August 8, 2007, the Court referred this Social Security action to United States Magistrate John S. Kaull with directions to submit to the Court proposed findings of fact and a recommendation for disposition. On December 16, 2008 Magistrate Judge Kaull filed his Report and Recommendation and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e), Fed. R. Civ. P., to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation and further directed the parties that failure to file objections would

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result in a waiver of the right to appeal from the judgment of this Court. The parties did not file any objections.

Upon consideration of Magistrate Judge's recommendation and having received no written objections,¹ the Court accepts and approves the Report and Recommendation. Therefore, the Court

ORDERS that Magistrate Judge Kaull's Report and Recommendation is accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate. Accordingly,

1. the Commissioner's motion for Summary Judgment (dkt. no. 17) is **DENIED**;
2. The decision of the Commissioner is **REVERSED**;
3. The case is **REMANDED** to the Commissioner for a new hearing; and
4. This civil action is **DISMISSED WITH PREJUDICE** and **RETIRED** from the docket of this Court.

The Clerk of Court is directed to enter a separate judgment order. Fed.R.Civ.P. 58.

¹ The parties' failure to object to the Report and Recommendation not only waives their appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

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The Court directs the Clerk of the Court to mail a copy of this Order to the pro se plaintiff, certified mail, return receipt requested, and to transmit a copy of this Order to counsel of record.

DATED: January 2, 2009

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE